IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5720 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KANJIBHAI NARANBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

MS SUMAN PAHWA for Petitioner

MR KT DAVE AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 18/01/2000

ORAL JUDGEMENT

Leave granted to the petitioner to produce on record the reply sent by the District Magistrate, Valsad addressed to the learned advocate for the petitioner in response to the representation dated 31-7-1999.

#. Heard Ms.Suman Pahawa, learned advocate for the petitioner and Mr.K.T.Dave, learned AGP appearing for respondents No. 1, 2 & 3.

#. The detention order dated 23-4-1999 passed by respondent No. 2 - The District Magistrate - Valsad against the petitioner - detenu in exercise of powers conferred under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act 1985 (`PASA' for short') is challenged by way of this present petition under Article 226 of the Constitution of India.

#. That the grounds of detention served and supplied to the detenu under Section 9(1) of the PASA, a copy of which is produced at Annexure- B interalia indicates that in all 4 criminal cases were registered against the petitioner made punishable under Bombay Prohibition Act at Vapi Town police stations in between 23-8-98 to 21-2-1999. That in all cases, the Indian made foreign liquor was seized from the possession of the petitioner / detenu. That all the four cases are pending for trial in the court.

That on the basis of aforesaid material collected during the investigation in respect to said four cases, the respondent No.2 - the District Magistrate, Valsad has come to the conclusion that the petitioner is bootlegger within the meaning of Section 2(b) of the PASA. That enforcement of the general provisions of law being not sufficient to prevent the petitioner from continuing his alleged anti social activities, the detention order is necessary and hence, the impugned order is passed.

#. It has been contended on behalf of the petitioner at bar that representation dated 31-7-1999, a copy of which is produced at Annexure "C" i.e. on running page - 27 was forwarded by the learned advocate for the detenu petitioner to the detaining authority which was received by him. However, the detaining authority without forwarding the same to the State Government, himself has rejected the same and intimated to the learned advocate for the petitioner / detenu vide reply dated 6-8-99. It is submitted that the detenu has claimed report of chemical analyzer, which was not supplied to the detenu along with the compilation of papers served and thereby vide the said representation, the detenu has claimed the copy of the report of the chemical analyzer along with the other documents.

#. That the reply dated 6-8-1999 sent by the District

Magistrate, Valsad discloses that representation has been rejected without supplying the document or stating reasons as to why such documents are not supplied. Furthermore, the detaining authority had become functus officio after the order has been confirmed by the State Government and thereby, the detaining authority was obliged to forward the said representation to the State Government for necessary process. It appears that the detaining authority having failed to forward the same to the State Government or having failed to supply the necessary document claimed by way of representation, has violated the mandate of Article 22(5) of the Constitution of India which has precluded the detenu from making effective representation and as such, the continued detention of the detenu is bad in law.

#. As the petition succeeds on the aforesaid ground alone, it is not necessary to consider and decide the other contentions raised in the petition.

#. On the basis of the aforesaid discussion, the petition is allowed. The detention order dated 23-4-1999 passed by respondent No. 2 - The District Magistrate, Valsad against the petitioner is hereby quashed and set aside. The petitioner - Shri Kanjibhai Naranbhai Patel is ordered to be set at liberty forthwith, if not required in any other case. Rule to that extent is made absolute.

Date : 18-1-2000 [A.K.Trivedi, J.]

#kailash#